

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
EUREKA DIVISION

ANDREW GEORGE PIAZZA,  
Plaintiff,

No. C 15-2916 NJV (PR)

**ORDER OF DISMISSAL**

v.

KEVIN CHAPPELL, et. al.,  
Defendants.

Plaintiff, a state prisoner, has filed a pro se civil rights complaint under 42 U.S.C. § 1983. The court dismissed the original complaint with leave to amend. (Doc.7.) Plaintiff sent a letter seeking to withdraw this case and then filed an amended complaint. (Doc. 9.) The court has reviewed the amended complaint.

**DISCUSSION**

**A. Standard of Review**

Federal courts must engage in a preliminary screening of cases in which prisoners seek redress from a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). In its review the court must identify any cognizable claims, and dismiss any claims which are frivolous, malicious, fail to state a claim upon which relief may be granted, or seek monetary relief from a defendant who is immune from such relief. *Id.* at 1915A(b)(1),(2). Pro se pleadings must be liberally construed. *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1990).

Federal Rule of Civil Procedure 8(a)(2) requires only "a short and plain statement of the claim showing that the pleader is entitled to relief." "Specific facts are not necessary; the statement need only "give the defendant fair notice of what the . . . claim is and the

1 grounds upon which it rests." *Erickson v. Pardus*, 551 U.S. 89, 93 (2007) (citations  
2 omitted). Although in order to state a claim a complaint "does not need detailed factual  
3 allegations, . . . a plaintiff's obligation to provide the 'grounds' of his 'entitle[ment] to relief'  
4 requires more than labels and conclusions, and a formulaic recitation of the elements of a  
5 cause of action will not do. . . . Factual allegations must be enough to raise a right to relief  
6 above the speculative level." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)  
7 (citations omitted). A complaint must proffer "enough facts to state a claim to relief that is  
8 plausible on its face." *Id.* at 570. The United States Supreme Court has explained the  
9 "plausible on its face" standard of *Twombly*: "While legal conclusions can provide the  
10 framework of a complaint, they must be supported by factual allegations. When there are  
11 well-pleaded factual allegations, a court should assume their veracity and then determine  
12 whether they plausibly give rise to an entitlement to relief." *Ashcroft v. Iqbal*, 556 U.S. 662,  
13 679 (2009).

14 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential  
15 elements: (1) that a right secured by the Constitution or laws of the United States was  
16 violated, and (2) that the alleged deprivation was committed by a person acting under the  
17 color of state law. *West v. Atkins*, 487 U.S. 42, 48 (1988).

## 18 **B. Legal Claims**

19 Plaintiff states that his confiscated property has not been returned.

20 Neither the negligent nor intentional deprivation of property states a due process  
21 claim under § 1983 if the deprivation was random and unauthorized. *See Parratt v. Taylor*,  
22 451 U.S. 527, 535-44 (1981) (state employee negligently lost prisoner's hobby kit),  
23 *overruled in part on other grounds, Daniels v. Williams*, 474 U.S. 327, 330-31 (1986);  
24 *Hudson v. Palmer*, 468 U.S. 517, 533 (1984) (intentional destruction of inmate's property).  
25 The availability of an adequate state post-deprivation remedy, e.g., a state tort action,  
26 precludes relief because it provides sufficient procedural due process. *See Zinermon v.*  
27 *Burch*, 494 U.S. 113, 128 (1990) (where state cannot foresee, and therefore provide  
28

1 meaningful hearing prior to, deprivation statutory provision for post-deprivation hearing or  
2 common law tort remedy for erroneous deprivation satisfies due process); *King v.*  
3 *Massarweh*, 782 F.2d 825, 826 (9th Cir. 1986) (same). California law provides such an  
4 adequate post-deprivation remedy. See *Barnett v. Centoni*, 31 F.3d 813, 816-17 (9th Cir.  
5 1994) (citing Cal. Gov't Code §§ 810-895).

6 If the deprivation is not random and unauthorized, but the result of "established state  
7 procedure," the availability of a post-termination tort action does not necessarily provide  
8 due process. See *Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 435-37 (1982) (failure on  
9 part of state commission to hold hearing within statutory time limits not permitted to  
10 terminate timely filed claim). *Parratt* does not apply where the state has procedures  
11 designed to control the actions of state officials and the officials act pursuant to those  
12 procedures. See *Zimmerman v. City of Oakland*, 255 F.3d 734, 738 (9th Cir. 2001);  
13 *Armendariz v. Penman*, 31 F.3d 860, 866 (9th Cir. 1994), aff'd in part on relevant grounds  
14 and vacated in part on other grounds on reh'g en banc, 75 F.3d 1311 (9th Cir. 1996) (en  
15 banc). In those instances, the Fourteenth Amendment requires "'an opportunity . . .  
16 granted at a meaningful time and in a meaningful manner,' . . . for a hearing appropriate to  
17 the nature of the case.'" *Logan*, 455 U.S. at 437. Due process is violated where a  
18 deprivation is predictable and pre-deprivation process possible, but state officials, acting  
19 under apparent authority of state procedures, provide no pre-deprivation procedure and are  
20 specifically charged with the authority to effect the deprivation complained of. See  
21 *Zimmerman*, 255 F.3d at 739 (holding that a due process challenge to the deprivation of  
22 property may go forward where (1) the deprivation took place at a specific, predictable point  
23 in the seizure process; (2) the seizing officer was delegated the power and authority to  
24 effect the very deprivation complained of; and (3) he also had the concomitant duty to  
25 initiate the procedural safeguards set up under the local ordinance); *Armendariz*, 31 F.3d at  
26 866.

1 Plaintiff states that he received a rules violation while at San Quentin State Prison  
2 and was assessed a 180 days loss of privileges. He was later given an additional 90 days  
3 of loss of priveleges which was confirmed when he appeared in front of a Classification  
4 Committee. As a result of the loss of privileges, plaintiff was moved to a new housing area  
5 and his recreational and entertainment appliances were confiscated and he was given a  
6 property receipt and told the property would be returned when the loss of privileges ended.  
7 The items were twenty-four single compact discs, two double compact discs, and two hot  
8 pots. Prior to the loss of privileges punishment ending, plaintiff was transferred to a  
9 different prison, but these items have still not arrived at the new prison. Plaintiff states that  
10 had he been informed in advance of the transfer he would have inquired about transferring  
11 the property. His exhibits indicate that his other property was transferred to the new prison,  
12 just not the confiscated property.

13 It is unclear what has happened to the compact discs and hot pots at issue. Plaintiff  
14 argues that defendants intentionally deprived him of his property. Either an intentional or  
15 negligent deprivation appears to be the situation as his other property arrived at the new  
16 prison. It does not appear that the permanent deprivation of the confiscated property was  
17 envisioned as part of the rules violation punishment. Plaintiff notes that the property would  
18 have been returned had he not been transferred. Because plaintiff has a post-deprivation  
19 remedy this fails to state a § 1983 claim.


20 Plaintiff has failed to provide sufficient allegations to demonstrate that the  
21 deprivation of property was the result of an established state procedure to fall into the  
22 *Zimmerman* line of cases. Plaintiff also argues that the deprivation of the compact discs  
23 and hot pots presents a due process violation. The court finds that the deprivation of these  
24 items does not demonstrate an "atypical and significant hardship on the inmate in relation  
25 to the ordinary incidents of prison life." *Sandin v. Conner*, 515 U.S. 472, 484 (1995).  
26 Because plaintiff has already been provided leave to amend and allowing further  
27 amendment would be futile, this case is dismissed with prejudice.  
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**CONCLUSION**

1. This action is dismissed with prejudice for the reasons set forth above.
2. The Clerk shall close this case.

**IT IS SO ORDERED.**

Dated: October 15, 2015.

  
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NANDOR J. VADAS  
United States Magistrate Judge